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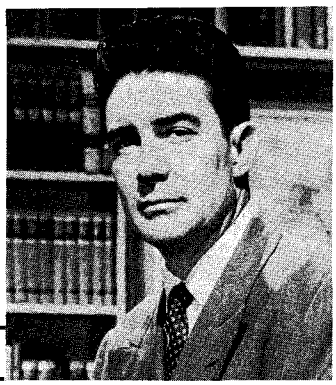

DAN SMOOT

OUR LABOR LAWS

On March 29, 1965, the U. S. Supreme Court handed down decisions in three labor-management relations cases:

(1) THE AMERICAN SHIP BUILDING COMPANY CASE. In 1961, the company was unable to negotiate a new contract with eight unions representing employees. The unions wanted to continue negotiations until mid-winter, which is the busiest time of year for the company. The company (which had endured five strikes in nine years) feared that if negotiations continued, the unions would call a strike at the worst possible time—the peak season of the company's highly seasonal operations. To obviate this catastrophe, the company closed its shipyard. This exerted such economic pressure that the unions agreed to a new contract (in October, 1961). The NLRB (National Labor Relations Board) found the company guilty of illegal lockout. The Supreme Court reversed the NLRB, unanimously holding that, when bargaining stalemates, an employer may close his plant to exert economic pressure on unions.[1]

(2) CARLSBAD GROCERY STORE CASE. In 1960, Local 462 of the Retail Clerk's International Association called a strike against one of six Carlsbad, New Mexico, grocery stores with which the union was trying to negotiate labor contracts. The other stores recognized this as a divide-and-conquer, whipsaw strike. They closed their doors, locked out union members, and reopened with non-union employees. The NLRB ruled the stores guilty of illegal lockout. The Supreme Court reversed the NLRB ruling.[1]

(3) DARLINGTON MANUFACTURING COMPANY CASE. In 1956, the American textile industry was in bad shape—because of governmental policies which used American tax money to subsidize building and maintenance of textile mills in foreign lands; which enabled monopolistic unions to impose labor costs about 20 times greater than labor costs in foreign textile mills; which made American cotton available to foreign mills at prices below what American mills

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paid. In October, 1956, a textile mill in South Carolina—Darlington Manufacturing Company—decided to give up. The stockholders voted to sell its assets and go out of business. Meanwhile, the Textile Union was trying to organize the plant. In an election, the union, by a margin of eight votes, won bargaining rights for Darlington's 315 employees. The sale of Darlington's assets was made at public auction shortly after the election.[2]

The NLRB ruled that the mill had been closed because Roger Milliken (President of Darlington and owner of 5% of its stock) disliked unions. Holding that there was sufficient common ownership of the Darlington mill by Deering Milliken & Company and related corporations to make them all responsible for Darlington employees thrown out of work, the NLRB ordered the Deering Milliken textile group to give back pay to Darlington employees until they had obtained equivalent jobs with other companies or in other Deering Milliken mills. The company appealed. The NLRB upheld the union position on four different occasions. Eventually, the U. S. Fourth Circuit Court of Appeals was asked to order enforcement of the NLRB ruling. The Appeals Court refused, saying that even if the Darlington mill had closed for anti-union reasons,

"to go out of business *in toto*, or to discontinue it in part, permanently at any time, we think was Darlington's absolute prerogative."[2]

On March 29, 1965, the U. S. Supreme Court, in a 7-0 ruling, returned the case to the NLRB and the Circuit Court for a decision on whether the Darlington Manufacturing Company had anti-union motives in closing its plant. The Supreme Court held that an employer has an absolute right to terminate his *entire* business for any reason he pleases, but does not have a right to close *part* of his business "if motivated by a purpose to chill unionism in any of the remaining plants of the single employer."[1, 3]

In a free society, the right of an employer to quit business should be as unlimited as the right of an employee to quit work. Hence, the two March 29, 1965, Supreme Court decisions affirming the right of employers to close their plants rather than give in to union demands make sense. Yet, they directly contradict previous Supreme Court findings on this same point. The Court's Darlington Manufacturing Company decision—holding that an employer may quit entirely but may not stop part of his operations—compounds the confusion.

What rights *do* employers have under federal labor laws, as administered and interpreted by the NLRB and the federal courts? No one knows.

An employer may appeal an NLRB decision to a higher level of the Board itself. Eventually, he may appeal to a federal court. The court may hear the appeal, or reject it and leave the employer at the mercy of the NLRB. When a case gets into the federal courts, no one can guess what will happen. The Supreme Court may or may not hear the case on final appeal. The Court may uphold, or overturn an NLRB ruling. The Court may decide in one case the opposite of what it had previously decided in a similar case. Sometimes, the NLRB reverses itself.

The only consistency in the administration and adjudication of federal labor laws is the illegal use of government power. All federal labor laws are unconstitutional, because the Constitution grants the federal government no power to intervene in labor-management affairs. Federal labor laws are also *discriminatory*, favoring monopolistic unionism, granting special privileges to union organizations.

The basic federal labor law is the National Labor Relations Act (Public Law 74-198, signed by President Franklin D. Roosevelt on July 5, 1935, generally called the Wagner Act). The Taft-Hartley Act of 1947 and the Landrum-Griffin Act of 1959 amended the Wagner Act, but did not alter basic purposes.

The Wagner Act created the NLRB to help achieve the purposes of the law. A basic, stated purpose was to *encourage* collective bargaining. The law, and the agency established to admin-

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ister it, have been used to *enforce* collective bargaining.

Workers who want to band together and bargain collectively should not be denied the right to do so; but when government *forces* workers to bargain collectively, it denies them the right to bargain as individuals. Government-enforced collective bargaining strips a worker of his individuality as a human being. In a big unionized plant, a man cannot put in extra effort with the hope of getting ahead on his merit. He cannot go directly to his own employer to make a complaint or ask for a raise. He gets a uniform raise, along with all other workers—a raise which he had no part in negotiating and which may have no relation to his individual worth as an employee.

Under federal law and NLRB practices, an employer, in a unionized plant, who gives his own employees a raise, without first getting permission from union officials, can be found guilty of the unfair labor practice of taking unilateral wage action. The NLRB has even found employers guilty of unfair labor practices for giving wage raises to employees in companies where employees do not belong to a union, and have made it emphatically clear in an election that they do not want a union to represent them.

Union officials contend, and the NLRB officially agrees, that:

"The natural effect of unilateral wage action is to undermine the union by demonstrating to the employees that they don't need a union to secure economic benefits . . ."[4]

On the other hand, the NLRB has ruled that a union, as an employer, in handling its own employee affairs, can engage in practices which the NLRB calls unfair if engaged in by other employers.[5]

Chaos and Injustice

A few cases illustrate the chaos and injustice caused by unconstitutional government meddling in labor-management affairs.

On January 28, 1955, the New York Newspaper Guild struck one of the oldest newspapers in America, the *Brooklyn Eagle*, a daily.[6]

On March 16, 1955, the owner-publisher suspended publication, saying the union's wage demands would bankrupt the *Eagle*. The newspaper sold its assets and paid its debts. The union demanded that the defunct corporation give severance and vacation pay to 315 employees, whose jobs the union had destroyed.[6]

In April, 1957, the New York State Court of Appeals ruled that the corporation had to submit to NLRB arbitration. The corporation appealed to the U. S. Supreme Court, which refused to review the case.

The dispute, therefore, went to the NLRB for final decision. The arbiter whom NLRB selected was H. Willard Wirtz (then a professor at Northwestern University, now U. S. Secretary of Labor).

On February 5, 1959, the *union* announced that Professor Wirtz had ordered the non-existent *Brooklyn Eagle* to pay union members nearly a million dollars in severance and vacation pay. Professor Wirtz denied the former publisher's counter claim for two million dollars damages from the union—which had driven the paper out of business.

A union had a contract, as bargaining agent for employees, with Quaker State Oil Refining Company. When the contract period was near an end, management and union officials entered negotiations for renewal. Union officials made demands which the company considered ruinous. Negotiations deadlocked. The old contract expired before a new one was made. In this case, company officials took the initiative to say "no contract, no work." They closed the plant. Union officials called this a lockout, and accused the company of unfair labor practices. The NLRB found the company guilty as accused. The company appealed to the courts.[7]

On December 7, 1959, the Supreme Court

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upheld the NLRB and lower courts.[7] This decision was directly contradicted by two Supreme Court decisions on March 29, 1965, as mentioned before.[1,3]

A union had a contract as bargaining agent for Boston Gas Company employees — many of whom disliked the union, and resented being forced to belong and pay dues. In 1960, before the union contract expired, 30 percent of the employees petitioned for a decertification election to determine whether a majority of employees wanted to get rid of the union. The NLRB granted the petition, but the union appealed, and the election was not held. Before other legal steps were taken, the Eisenhower administration was replaced by the Kennedy administration. President Kennedy appointed an NLRB member even more friendly to union officials than those appointed by President Eisenhower. The NLRB, previously known as the "Eisenhower Board," became the "Kennedy Board." The Kennedy Board reversed the Eisenhower Board in the Boston Gas Company case, ruling that employees had no right to a decertification election.[4]

When Indiana had a right-to-work law, 14,000 General Motors employees in that state refused to join Walter Reuther's UAW. Reuther tried to negotiate an agency-shop clause in his contract with GM, so that the 14,000 would be forced to pay union dues even though they would not join the union. GM refused. UAW accused GM of unfair labor practices and took the case to the NLRB. Early in 1961, while it was still the "Eisenhower Board," the NLRB ruled in favor of the 14,000 employees. In September, 1961, the NLRB (now the "Kennedy Board") reversed the previous NLRB ruling and said that GM must grant the agency-shop agreement. General Motors appealed. In June, 1962, the Federal Court of Appeals in Cincinnati reversed the NLRB. The appeals court said, in effect, that General Motors did not have to grant an agency-shop agreement in Indiana. Reuther's UAW appealed to the Supreme Court. On June 3, 1963, the Supreme Court overturned the Court of Appeals decision, ruling, in effect, that General Motors must give Reuther the agency-shop agreement in Indiana.[8]

On July 27, 1959, the Fibreboard Paper Products Company hired an independent contractor to do maintenance work at Fibreboard's San Francisco plant. The company took this action in order to save $225,000.00 a year. The United Steelworkers of America complained that granting maintenance work to an outside firm would throw 73 Fibreboard employees out of work.[9]

On March 27, 1961, the Eisenhower NLRB ruled that Fibreboard had the right to decide who would do plant maintenance work.[9]

On April 13, 1962, the Kennedy NLRB reversed the March 27, 1961, Fibreboard decision.[10] Kennedy's NLRB ordered Fibreboard to do its own maintenance work, and to rehire the laid-off union members and give them back pay.[9]

On December 14, 1964, the U. S. Supreme Court in a unanimous decision, upheld the 1962 NLRB decision against Fibreboard.[11]

In the case of the Royal Plating and Polishing Company of Newark, New Jersey, one agency of government (the Newark Housing Authority) forced the company to close its plant; and then another agency of government (the NLRB) found the company guilty of an unfair labor practice for closing.[12]

The plant was located in an area which the Housing Authority had selected for redevelopment. The Authority gave notice that it would confiscate the plant, by condemnation if necessary. In 1962, the Housing Authority took a 90-day option to buy the site; and the company began liquidating the business, refusing new orders and gradually laying off employees. At the end of the 90-day option period, the plant was closed.[12]

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The AFL-CIO Metal Polishers Union, Local 44 (which had had a contract with the company since 1947), accused the company of an unfair labor practice, because it closed without consulting union officials. The union contended that the company might have managed to stay in business another six months. The NLRB held the company guilty as accused, ordering it to compensate all discharged employees for wages they did not earn during the six months when the company might have stayed in business.[12]

On April 5, 1954, Walter Reuther's UAW-CIO struck the Kohler (plumbing ware) Company, of Kohler, Wisconsin. The UAW massed imported pickets at the gates of the Kohler plant, and instituted a train of violence which resulted in murder, vandalism, arson, boycott, and terrorism against innocent people. The evident object of the strike was not to get anything for the workers at the Kohler plant, but to bludgeon Kohler into forcing his employees into the UAW, after the employees had made it very clear that they did not want to join the union.[13]

On August 26, 1960, the NLRB ruled against Kohler and in favor of the United Auto Workers on most issues in the six-year-old strike, ordering Kohler to reinstate nearly all strikers. Subsequently, a U. S. Court of Appeals upheld the 1960 NLRB ruling, but asked the Board to review the cases of workers not rehired.[13]

On September 29, 1964, the NLRB ordered Kohler to offer jobs and wages back to January, 1962, to 57 strikers not covered by the 1960 NLRB ruling. The Kohler Company has appealed to the U. S. Court of Appeals at Washington, D. C., noting that the dismissed employees had been guilty of unlawful conduct involving use of force, violence, and intimidation against non-striking employees.[13]

On January 20, 1964, the NLRB (in another case involving Reuther's UAW) ruled that unions have the legal right to make and enforce their own "internal rules." This means that union officials, backed by federal law, can control the working lives of union members, who can never appeal for relief if they feel abused by the unions. Specifically, the NLRB ruled (in this January, 1964, decision) that union officials have power to set production limits of workers in unionized plants, and power to fine any union member who produces more than union officials want him to produce.[14]

In February, 1964, a trial examiner of the NLRB ruled that, since union officials can fine members for over-producing, they can also fine members for crossing picket lines to work.[14]

On March 11, 1963, representatives of several unions negotiating with the Kingsport Press (Kingsport, Tennessee) rejected company offers, refusing to submit the offers to workers for a vote. Union officials called a general strike and declared economic warfare on the company and on workers who defied union orders.[15]

Employees of companies which do business with the Press were threatened and intimidated upon entering and leaving company grounds.[15]

Press employees, and their families, were subjected to threats and violence. Occupied homes, school buses, and automobiles were riddled with bullets. Tires were slashed, sugar dumped in gasoline tanks, houses and cars splashed with paint, people and property pelted with rocks and garbage, homes bombed with molotov cocktails.[15]

After more than 700 incidents of violence, union spokesmen said:

"If the company had not insisted on operating its plant in spite of the strike of its workers, would there have been any violence? It is a compliment to those involved that there has been so little violence considering the great provocation and the emotionally-charged atmosphere which is common in any strike situation."[15]

The Kingsport Press has managed to replace most of the striking workers. Though striking union members have been out of work for almost

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two years, the unions refuse to consider company contract proposals and are now demanding that the company discharge its new employees to make room for returning strikers, if and when other issues are resolved.[15]

In 1951, the NLRB, in a case involving the Denver Building Construction Trades Council, ruled that it was unfair labor practice for a union, in a dispute with one subcontractor of an industrial site, to picket and prevent employees of other subcontractors from working.[16]

In 1964, the U. S. Supreme Court (in *Carrier Corporation versus the United Steelworkers of America*), in effect, reversed that NLRB rule, saying it was within the rights of the steelworkers' union to picket a railroad gate used by New York Central workers because "the rail workers' jobs were related to normal production in the plant."[16]

On March 22, 1965, the *U. S. News & World Report* disclosed that the NLRB had held that an employer who had withdrawn personal friendship from a worker who joined a union was guilty of coercion amounting to a threat of job reprisal. A U. S. court of appeals has reversed that NLRB ruling.[17]

What Should Be Done

U. S. Senator John G. Tower (Texas Republican) says:

"Almost from its inception with the Wagner Act in 1935, this [National Labor Relations] Board has been under public and congressional fire for failure to perform its duties in an even-handed, impartial manner.

"After 12 years' experience with the Board under the Wagner Act, a long-suffering public saw Congress in 1947 pass the Taft-Hartley law, not only to redress a basic statutory imbalance, but also to undo the damage wrought by biased Board decisions. It soon became clear, however, that the Labor Board would not follow the mandate of the new law and would not respect the intent which Congress clearly expressed in passing that law . . . .

"So-called NLRB loopholes became the rule, and the very abuses grew which Congress in 1947 ordered stopped. Then after another 12 years, Congress again amended the labor laws with the Landrum-Griffin Act. And the Board's continuing refusal to follow congressional directives has been even more pronounced.

"Today abuses grow and flourish, abuses Congress thought it had banned . . . . Most damaging to public confidence, and most hostile to the will of Congress, have been those Board decisions that have permitted secondary boycotting, that have literally encouraged blackmail, picketing, that have trampled upon constitutional and statutory guarantees of free speech, and that have impaired the right of those who risk their capital to make the economic decisions necessary for proper management of their businesses.

". . . the NLRB . . . . now says management can no longer make its own decisions on efficiency and competitiveness.

"Management may no longer make decisions on the location of its facilities, on the future prospects of the business; in fact, it may no longer decide for itself whether it will stay in or go out of business . . . .

"The NLRB by its own decisions has demonstrated that it respects neither the letter of the law nor the intent of Congress . . . ."

"I would limit the NLRB to handling representation matters. This would include conduct of employee elections. But this agency would no longer investigate, prosecute, or adjudicate unfair labor practice cases as it does today."[18]

On March 4, 1965, Senator Tower introduced S 1384, a bill to divest the NLRB of its judicial functions and transfer unfair labor practice cases to federal district courts.[18]

Since the NLRB has never respected the intent or obeyed the laws of Congress, there is no reason to believe the Board would obey the new law Senator Tower proposes.

The NLRB should be abolished.

Americans have a right to organize unions and join them. They also have a right to strike.

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Taking a job that is offered, or quitting the one he has; joining a union that wants him, or refusing to join—these are part of an American's inalienable rights to life, liberty, and the pursuit of happiness.

No one—not even government—has a right to force someone to join a union if he does not want to join; and no one has a right to use force to keep a man from taking a job which someone else has quit, whether he quit for the purpose of striking or for any other purpose.

A labor picket line—however orderly and decent the individual members of it may be—is an instrument of force. Talking about peaceful picketing is like talking about peaceful robbery: it is peaceful because the victim does not resist.

Instances of violence on picket lines and in connection with strikes generally are almost infinite in number. Workers are beaten and shot, their cars destroyed, their homes bombed, and their families threatened because they try to work in a struck plant.

What seldom gets into the newspapers in connection with the so-called peaceful strikes are the relatively minor harassments which force workers to do what unions want—such harassments as ostracism, slander, personal vilification, and seemingly innocent but repeated accidents on the job.

Most workers in America are afraid to cross a picket line. To many, however, the picket line has become a symbol of the class warfare they have been taught to believe in.

Union strength in America has been built, in part, on hatred—class hatred. The insistent theme of union propaganda holds that management is the enemy of the laboring man, and that unions are due all credit for higher wages and better working conditions.

If unions *were* responsible for the rise of workers' living standards, then, of course, the highest living standards in the world would be in France, England, and Italy, where unionism has been dominant for generations.

Since 1790, living standards of wage earners in the United States have improved continuously —not in ratio to union activity, but in ratio to investment that private management has made in better plants and equipment.

Heavy capital investment in labor-saving tools accounts for the high productivity of America's workers. And high productivity accounts for high living standards.

Big monopolistic unions tend to depress living standards of workers, because they hold down production—with their strife-inciting activities, their feather-bedding practices, and their destruction of individual incentive.

The central evil of the labor movement is that government has granted special privileges to union officials and has given them unlawful power to force their will upon workers and management—sometimes upon the whole nation.

On May 18, 1965, President Johnson asked

WHO IS DAN SMOOT?

Born in Missouri, reared in Texas, Dan Smoot went to SMU getting BA and MA degrees, 1938 and 1940. In 1941, he joined the faculty at Harvard as a Teaching Fellow, doing graduate work for a doctorate in American civilization. From 1942 to 1951, he was an FBI agent: three and a half years on communist investigations; two years on FBI headquarters staff; almost four years on general FBI cases in various places. He resigned from the FBI and, from 1951 to 1955, was commentator on national radio and television programs, giving *both* sides of controversial issues. In July, 1955, he started his present profit-supported, free-enterprise business: publishing *The Dan Smoot Report,* a weekly magazine available by subscription; and producing a weekly news-analysis radio and television broadcast, available for sponsorship by reputable business firms, as an advertising vehicle. The *Report* and broadcast give *one* side of important issues: the side that presents documented truth using the American Constitution as a yardstick. If you think Smoot's materials are effective against socialism and communism, you can help immensely—help get subcribers for the *Report,* commercial sponsors for the broadcast.

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Congress to outlaw state right-to-work laws, by repealing Section 14 B of the Taft-Hartley Act. This would vastly increase the power of union officials. Closed shop labor contracts, which force employees to join unions, would be authorized throughout the land.

Congress should repeal *all* federal labor laws. This would abolish the NLRB and get the federal government out of its unconstitutional activities in labor-management relations.

Proper enforcement of state and local laws intended to protect life and property would provide adequate public regulation of labor-management relations in most cases. If special labor laws are needed for special circumstances, they should be enacted, enforced, and adjudicated at the state and local level.

FOOTNOTES

(1) "High Court Holds Business Can End To Balk Unionism," *The New York Times*, March 30, 1965, pp. 1, 37; "The Supreme Court; Limits on Labor & Management," *Time* magazine, April 9, 1965, pp. 66-7

(2) "High Court Agrees to Rule Whether Firm Has Right To Close To Avoid Unionization," *The Wall Street Journal*, March 21, 1964

(3) "High Court Affirms Complete Lockouts," AP dispatch from Washington, *The Dallas Morning News*, March 30, 1965, Sec. 1, p. 11

(4) "The NLRB, Tool of Union Leaders," *The Labor Digest*, Vol. 34, No. 2, April, 1961, pp. 1, 8

(5) "News Section," *Human Events*, September 10, 1955

(6) "Should Unions Have Monoply Powers?", by W. L. White, *Readers Digest*, August, 1955, pp. 33-42; "Strikebound Eagle Shut Permanently," story, *The New York Times*, March 17, 1955, pp. 1, 24

(7) *The Wall Street Journal*, December 8, 1959

(8) "Important Decision," *The Arizona Republic*, July 30, 1962; *U. S. News & World Report*, June 17, 1963, pp. 87-8

(9) "Plant Moves Possible, NLRB Executive Claims," article by Harry Bernstein, *The Los Angeles Times*, June 13, 1964; 130 NLRB 1022 (1961)

(10) 136 NLRB 1022, 7 (1962)

(11) "Summary of Supreme Court's Actions," *The New York Times*, December 15, 1964, p. 48

(12) "Firm's Caught in NLRB Bind," article by Ken Thompson, *The Dallas Morning News*, November 19, 1964, Sec. 4, p. 4

(13) *The Kohler Strike*, by Sylvester Petro, Henry Regnery Company, Chicago, 1961; "Latest Ruling In Kohler Strike," *U. S. News & World Report*, October 12, 1964, p. 93

(14) "For Unions — New Power Over Members," *U. S. News & World Report*, February 17, 1964, p. 103

(15) "Terror In Kingsport," *Human Events*, February 13, 1965, p. 11

(16) "Unions Reach an Accord on Picketing," by Damon Steston, *The New York Times*, February 27, 1965, p. 15

(17) "Trends in Labor," *U. S. News & World Report*, March 22, 1965, p. 94

(18) "Address By Senator Tower Before The National Association of Manufacturers," *Congressional Record*, March 4, 1965, pp. 4018-9 (daily)

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